

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DENNIS LEE HOHOL,

Petitioner,

ORDER

v.

10-cv-822-bbc

MICHAEL DITTMAN, Warden,
Redgranite Correctional Institution,

Respondent.

On January 24, 2011, I dismissed Dennis Lee Hohol's petition for a writ of habeas corpus under 28 U.S.C. § 2254 without prejudice for petitioner's failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A). On February 3, 2011, I denied his motion for reconsideration. Now before the court is petitioner's notice of appeal. Because petitioner has not paid the \$455 filing fee for his appeal, I construe his notice as a request to proceed in forma pauperis on appeal. Also, I address whether a certificate of appealability should issue.

Generally, to issue a certificate of appealability, the court must find that the applicant has "made a substantial showing of the denial of a constitutional right." Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000); see also 28 U.S.C. § 2253(c)(2). In this case, I did not consider the merits of the petition because I did not have jurisdiction to do so. Thus,

the sole question for appeal is whether I erred in concluding that petitioner had filed a successive petition.

When a court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a certificate should issue when the prisoner shows, at least, "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). See also Beyer v. Litscher, 306 F.3d 504, 505 (7th Cir. 2002) (applying this standard to claim dismissed under § 2244(b)(3)). Because it is not reasonably debatable whether Hohol's petition is a "second or successive petition" within the meaning of § 2244(b)(3), petitioner's request for a certificate of appealability must be denied. Further, petitioner's request to proceed in forma pauperis on appeal will be denied because I find that his appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3).

ORDER

IT IS ORDERED that petitioner Dennis Lee Hohol's request for leave to proceed in forma pauperis on appeal is DENIED because I am certifying that his appeal is not taken in good faith.

Further, IT IS ORDERED that a certificate of appealability will not issue Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for a certificate of

appealability, the petitioner may request a circuit judge to issue the certificate.

Entered this 14th day of February, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge